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KLAUS J. BACH & ASSOCIATES
PATENTS AND TRADEMARKS
4407 TWIN OAKS LANE
MURRYSVILLE PA 15668

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OFFICE OF PETITIONS

In re Application of
Blumich et al.
Application No. 10/078,069
Filed: February 19, 2002
Attorney Docket No. ME 102

DECISION DISMISSING
REQUEST FOR REFUND

~~In re Application of
Blumich et al.
Application No. 10/026,067
Filed: December 18, 2001
Attorney Docket No. ME 102~~

This is in response to the letter filed January 21, 2003 requesting reconsideration of the decision dismissing the request for refund mailed November 4, 2002.

Applicants argue that special circumstances apply since applicant did not wish to file duplicate applications, that this was "forced on applicant under the circumstances." Applicants state that a duplicate application was filed in an effort to claim priority to an earlier filed application. Applicants further state that it "was probably the decision of the Patent Office together with the US Postal Service to divert all the mail directed to cip (sic) code 20231 to Ohio for decontamination."

The arguments submitted by applicants have been considered; however, they are not convincing.

There was no indication in the application papers filed December 18, 2001, and assigned application No. 10/026,067, that the application was a duplicate of a previously submitted application.

The fact that applicants have filed duplicate or substantially duplicate applications does not entitle application to a refund of the filing fee. The papers filed on February 19, 2002, as application No. 10/078,069, are entitled to a filing date of February 19, 2002, and the filing fee paid in application No. 10/078,069, is the fee required by law. Similarly, the application papers filed on December 18, 2001, as application No. 10/026,067, are entitled to a filing date of December 18, 2001, and the filing fee paid in application No. 10/026,067 is the fee required by law.

37 CFR 1.26(a) reads:

(a) The Commissioner may refund any fee paid by mistake or in excess of that required. A change of purpose after the payment of a fee, such as when a party desires to withdraw a patent or trademark filing for which the fee was paid, including an application, an appeal, or a request for an oral hearing, will not entitle a party to a refund of such fee. The Office will not refund amounts of twenty-five dollars or less unless a refund is specifically requested, and will not notify the payor of such amounts. If

a party paying a fee for requesting a refund does not provide the banking information necessary for making refunds by electronic funds transfer (31 U.S.C. 3332 and 31 CFR part 208), or instruct the Office that refunds are to be credited to a deposit account, the Commissioner may require such information, or use the banking information on the payment instrument to make a refund. Any refund of a fee paid by credit card will be by a credit to the credit card account to which the fee was charged. (Emphasis added.)

Section 607.02 of the Manual of Patent Examining Procedure, Eighth Edition (August 2001) reads, in part, as follows:

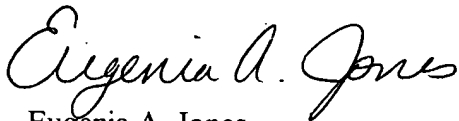
Under 35 U.S.C. 42(d) and 37 CFR 1.26, the Office may refund: (1) a fee paid by mistake (e.g., fee paid when no fee is required); or (2) any fee paid in excess of the amount of fee that is required. See *Ex parte Grady*, 59 USPQ 276, 277 (Comm' r Pat. 1943) (the statutory authorization for the refund of fees under the "by mistake" clause is applicable only to a mistake relating to the fee payment). **When an applicant or patentee takes an action "by mistake" (e.g., files an application or maintains a patent in force "by mistake"), the submission of fees required to take that action (e.g., a filing fee submitted with such application or a maintenance fee submitted for such patent) is not a "fee paid by mistake" within the meaning of 35 U.S.C. 42(d).** 37 CFR 1.26(a) also provides that a change of purpose after the payment of a fee, as when a party desires to withdraw the filing of a patent application for which the fee was paid, will not entitle the party to a refund of such fee. (Emphasis added and error corrected.)

Therefore, the Office is without statutory authority to refund the filing fee paid in application No. 10/078,069.

In view of the above, the request for refund is dismissed.

Applicant may wish to file a letter of Express Abandonment in compliance with 37 CFR 1.138 in application No. 10/078,069.

Telephone inquiries specific to this matter should be directed to Terry J. Dey at (703) 308-1201.



Eugenia A. Jones
Senior Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy